In the Matter of Merchant Mariner's Document No. Z-198079-D1(R)
Issued to: LOUIS GATES, JR.

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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LOUIS GATES, JR.

This appeal has been taken in accordance with Public Law 500, 83rd Congress (68 Stat. 484) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 18 March 1955, an Examiner of the United States Coast Guard at Mobile, Alabama, revoked Merchant Mariner's Document No. Z-198079-D1(R) issued to Louis Gates, Jr., upon finding him guilty of a specification alleging that he was convicted by a court of record, the Circuit Court of Mobile County, Alabama, on 28 February 1955, of the offense of possession of narcotics in violation of the narcotic drug laws of Alabama.

At the hearing which commenced on 2 March 1955, it was established that Appellant was convicted as alleged in the above specification on his plea of guilty and sentenced to two years imprisonment. On the day of the imposition of the sentence, it was suspended and Appellant was placed on probation for a period of two years. On 1 March 1955, counsel for Appellant submitted a motion to the Mobile County Circuit Court to permit him to withdraw his plea of guilty on the ground that the purpose of the probation order would be defeated since his conviction would result in the revocation of his seaman's document. Also on 1 March 1955, the same Circuit Court Judge entered an order granting the motion and unconditionally vacating and setting aside the judgement and sentence entered against Appellant on 28 February 1955. There was an informal agreement between the Judge and counsel for Appellant that the indictment against Appellant would remain pending for a period of two years.

In this appeal, it is contended that there is no record of conviction against Appellant because the trial judge exercised his discretion in entering an order vacating the conviction; and the Examiner had no authority to question the judgement of the trial judge.

APPEARANCES: A. J. Seale, Esquire, of Mobile, Alabama, of Counsel.

OPINION

Since the judgment and sentence were unconditionally set aside, the conviction was void ab initio and there was no conviction of a narcotic drug law violation upon which to base an order of revocation under Public Law 500, 83rd Congress (68 Stat. 484). The pending status of the indictment supports the proposition that the conviction was completely wiped out. The Examiner cannot question the judgment of the trial judge in exercising his discretionary power to vacate the conviction. This case presents a different situation than where a conviction is conditionally set aside and may later be reactivated upon the happening of certain subsequent events. In the present case, subsequent events could only lead to a trial upon the pending indictment and Appellant could not then set up his withdrawn plea of guilty on the ground of former jeopardy.

The above is in accord with Kercheval v. United States (1927), 274 U.S. 220 which held that a withdrawn guilty plea, in place of which a plea of not guilty has been substituted, is not admissible as evidence of guilt of the offense. The court stated:

> "The effect of the court's order permitting the withdrawal was to adjudge that the plea of guilty be held for naught. Its subsequent use as evidence against petitioner was in direct conflict with that determination. When the plea was annulled it ceased to be evidence. By permitting it to be given weight the court reinstated it pro tanto. The conflict was not avoided by the court's charge. Giving to the withdrawn plea any weight is in principle quite as inconsistent with the prior order as it would be to hold the plea conclusive."

Following the federal court rule expressed in this Supreme Court decision leads to the conclusion that there could be no proof of a conviction, on 28 February 1955, because evidence of such a completely invalidated conviction is not admissible in this record. Any other conclusion could result in finding Appellant guilty of a specification based upon an indictment under which Appellant is eventually tried and acquitted. But even if the view opposed to that expressed in this Supreme Court decision is adopted, the withdrawn plea of guilty could only be used as inconclusive evidence that Appellant committed the underlying offense of possession of narcotics. This would not be sufficient to support the specification herein or the requirements of Public Law 500 both of which specify a court conviction for violation of narcotic drug laws. There must be compliance with the statutory requirement.

For these reasons, the conclusion that the specification was

proved must be reversed and the specification dismissed.

ORDER

The order of the Examiner dated at Mobile, Alabama on 18 March 1955 is VACATED, SET ASIDE and REVERSED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 1st day of June, 1955.